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Moore Geotechnical & Environmental Sciences Consultants*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LOUIS ROCK and DEBBY ROCK, Individually
and as Husband and Wife,

Plaintiffs,

vs.

NINYO & MOORE, GEOTECHNICAL
CONSULTANTS dba NINYO & MOORE
GEOTECHNICAL & ENVIRONMENTAL
SCIENCES CONSULTANTS, a Foreign
Corporation; ROADS SAFE TRAFFIC SYSTEMS,
INC., a Foreign Corporation; DOE
INDIVIDUALS 1 through 100; and ROE
CORPORATIONS 1 through 100, inclusive,

Defendants.

CASE NO.

**PETITION FOR REMOVAL OF ACTION
UNDER 28 U.S.C. SECTION 1441
(DIVERSITY)**

JURY DEMANDED

Pursuant to 28 U.S.C. Section 1441 (b), Defendant, NINYO & MOORE,
GEOTECHNICAL CONSULTANTS dba NINYO & MOORE GEOTECHNICAL &
ENVIRONMENTAL SCIENCES CONSULTANTS ("Ninyo & Moore"), by and through its attorneys of
record, MICHAEL R. HALL, ESQ. and STEPHEN M. DIXON, ESQ., of the law firm of HALL JAFFE
& CLAYTON, LLP, files this Petition for Removal of Clark County District Court Case No. A-17-
754824-C styled *Louis Rock and Debby Rock v. Ninyo & Moore, et al.* and states as follows:

1 1. On May 4, 2017, Plaintiffs Louis Rock and Debby Rock (“Plaintiffs”)
2 commenced an action in the Eighth Judicial District Court, Clark County, State of Nevada, entitled *Louis*
3 *Rock and Debby Rock v. Ninyo & Moore, et al.* Case No. A-17-754824-C. Plaintiffs served the
4 Summons and First Amended Complaint on Ninyo & Moore on May 15, 2017. Copies of the Summons
5 and First Amended Complaint are attached hereto as **Exhibits “A,”** and **“B.”** These constitute all of the
6 pleadings served on defendant Ninyo & Moore except for a Petition for Exemption From Arbitration
7 which is discussed more fully below. Defendant Ninyo & Moore filed and served its Answer to
8 Plaintiffs’ First Amended Complaint on June 5, 2017. A copy of that Answer is attached hereto as
9 **Exhibit “C.”**

10 2. This action is a civil action of which this Court has original jurisdiction under 28
11 U.S.C. Section 1332, and is one which may be removed to this Court by Defendant Ninyo & Moore
12 pursuant to the provisions of 28 U.S.C. Section 1441 (b) in that it is a civil action between citizens of
13 different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

14 3. Plaintiffs are citizens of Nevada. Defendant Ninyo & Moore is a foreign
15 Corporation. The other named Defendant, Roadsafe Traffic Systems, Inc. (“Roadsafe”) is also a foreign
16 corporation. Roadsafe has yet to make an appearance in this case and upon information and belief has
17 yet to retain counsel. Once counsel is retained, consent will be sought for removal with Roadsafe. Thus,
18 Plaintiffs and both defendants are citizens of different states and diversity jurisdiction is appropriate.

19 4. Venue is appropriate pursuant to 28 U.S.C. Section 1441(a) and LR IA6-1.

20 5. The matter in controversy exceeds the sum of \$75,000. Plaintiffs asserted in their
21 complaint that they are entitled to general, special, and punitive damages in excess of \$10,000 (which is
22 the prior threshold for state jurisdiction and not an estimate of individual damages incurred by the
23 Plaintiffs in this matter) plus attorney’s fees and costs.

24 According to the First Amended Complaint, Plaintiff Louis Rock was driving his
25 vehicle when it struck a metal object in the road that was sticking out of the lane in which he was
26 traveling. That as a result of the accident, Plaintiffs allege that Louis Rock has “received medical and
27 other treatment, and that said services, care, and treatment is continuing and shall continue in the future.”
28 See Exhibit “B.” In addition, Plaintiff Louis Rock alleges “physical impairment, mental anguish, and

1 loss of enjoyment of life . . . a loss of past and future earnings, and earning capacity . . . [as well as] a
2 loss of past and future household services.” See Exhibit “B.” Plaintiff Louis Rock also alleged in the
3 First Amended Complaint that he “sustained personal injuries, some of which conditions may be
4 permanent and disabling.” See Exhibit “B.”

5 Plaintiffs recently petitioned the Clark County District Court for a removal from
6 Nevada’s mandatory arbitration program on June 6, 2017. In that Petition, Plaintiffs asserted that Louis
7 Rock’s medical damages currently total \$487,086.88. See Plaintiffs’ Petition for Exemption, a copy of
8 which is attached hereto as **Exhibit “D.”** As a result, Plaintiffs are highly likely to ask a jury for more
9 than the \$75,000 jurisdictional threshold and general and special damages.

10 6. A defendant’s duty is not to prove by a preponderance of the evidence that the
11 plaintiff is likely to recover an amount in excess of the threshold. Rather, the jurisdictional minimum in
12 diversity cases is determined by the amount at stake to either party. Hamrick v. REO Props. Corp., 2010
13 U.S. Dist. LEXIS 85073 (Nev. 2010). In other words, the amount in controversy is satisfied when the
14 plaintiff’s potential gain exceeds the jurisdictional limit. Id. The pertinent question the Court is to ask is
15 whether or not plaintiff is likely to ask a jury for an amount above \$75,000. Canonico v. Seals, 2013
16 U.S. Dist. LEXIS 60047 (Nev. 2013).

17 As such, the appropriate figure to use in determining whether Ninyo & Moore has
18 presented adequate evidence to establish the amount in controversy is not the probable amount that
19 Plaintiffs will recover, but rather the total potential value of Plaintiffs’ claims considering all of the
20 allegations in all the asserted damages. If Ninyo & Moore can show by a preponderance of the evidence
21 that: (1) Plaintiffs are likely to ask from the jury an amount over the jurisdictional threshold, or (2) for a
22 jury to award Plaintiffs full recovery that would be over the jurisdictional threshold, then jurisdiction
23 with the Federal Court should remain. As such, it is apparent from the type of damages alleged by
24 Plaintiffs that the amount in controversy is in excess of \$75,000 exclusive of interest and costs. It is also
25 apparent that Ninyo & Moore has satisfied the jurisdictional threshold.

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DATED this 15 day of June, 2017.

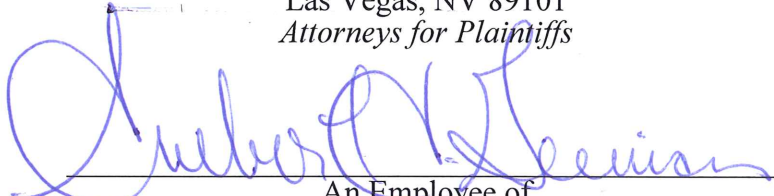
By

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify under penalty of perjury that I am an employee of HALL JAFFE & CLAYTON, LLP, and that on the 15th day of June, 2017, the foregoing **PETITION FOR REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441 (DIVERSITY)** was served upon the parties by the Court's designated electronic filing and service program and/or by placing an original or true copy thereof in a sealed envelope, and depositing it in the U.S. Mail, postage prepaid, at Las Vegas, Nevada, addressed as follows:

Robert T. Eglet, Esq.
Robert M. Adams, Esq.
EGLET PRINCE
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An Employee of
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